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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,156	06/21/2000	Jeff Young	2230	6933

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EXAMINER

GROSS, KENNETH A

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 01/13/2004

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/599,156

Applicant(s)

YOUNG ET AL.

Examiner

Kenneth A Gross

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s) _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. This action is in response the amendment filed on November 28th, 2003.
2. Claim 1 remains rejected under 35 U.S.C. 102(b). Claims 2-15, 18, 21, 23-35, and 37-51 remain rejected under 35 U.S.C. 103(a). Claims 16, 17, 19, and 22 are now rejected under 35 U.S.C. 103(a).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Luu (U.S. Patent Number 5,860,012).

In regard to Claim 1, Luu teaches: (1) initiating a connection at a server to the client machine (Column 1, lines 60-66); (2) transmitting an installation service that installs software, the installation service transmitted from the server to the client machine based on the connection initiated by the server (Column 2, lines 2-6); and (3) executing the installation service on the client machine (Column 2, lines 2-6). The installation package contains commands that are executed in order to install the application, as stated in Column 5, lines 10-15 and Column 7, lines 18-20. The commands contained in the package file are listed in Appendix A, starting in Column 35.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-15, 27-34, 38-39, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu (U.S. Patent Number 5,860,012) in view of May et al. (U.S. Patent Number 5,809,251).

For specific rejections of Claims 2-15, 27-34, 38-41, see the office action mailed on December 19th, 2002.

3. Claims 16, 17, 19, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over May et al. (U.S. Patent Number 5,809,251) in view of Luu (U.S. Patent Number 5,860,012).

In regard to Claim 16, May teaches a configuration manager for initiating a connection to the client machine (Column 13, lines 47-48). May does not explicitly teach a data manager, but does teach a medium for evaluating information on discovered remote client machines (Column 13, lines 49-55) and the selected client machine is the one in which the server connects to initially (Column 13, lines 47-48). The server must have selected the machine before the connection was made. Although May does teach transmitting software to a client machine (Column 13, lines 59-64), May does not teach transmitting an installation service installing part of the management software on the selected client machine. Luu, however, does teach transmitting an installation service, with commands that installed a software application of the client machine. The installation package contains commands that are executed in order to install

the application, as stated in Column 5, lines 10-15 and Column 7, lines 18-20. The commands contained in the package file are listed in Appendix A, starting in Column 35. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to build a system including a data manager for evaluating information associated with a plurality of discovered remote client machines, and for selecting one of the client machines, and a configuration manager for initiating a connection to the client machine, as taught by May, where the system further includes an installation service transmitted by the configuration manager to the client machine, the service installing part of the software on the client machine, as taught by Luu, since this allows a self-executing package to install files for an application on a client machine.

Claims 17, 19, and 22 are now rejected under 35 U.S.C. 103(a) over May in view of Luu. For specific rejections of the limitations of these Claims, see the office action mailed on December 19th, 2002.

In regard to Claim 18, the examiner takes official notice that a common way to store information on a computer is by means of a file, which can be classified as a type of record.

In regard to Claim 20, May teaches that the configuration request comprises a client configuration record. When the client responds to the configuration request, it sends with it a client configuration record, indicating the version of the software being updated by the server (Figure 7A, items 90 and 91).

In regard to Claim 21, May teaches, "the MIS system queues a remote request for the next appropriate connection" (Column 8, lines 19-21). Therefore, it is obvious that the request will eventually be dequeued and processed.

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In regard to Claim 23, Luu teaches a bootstrap service for installing additional management software (Column 7, lines 11-24 and Column 8, lines 1-5).

In regard to Claim 24, Luu teaches obtaining files from a server (Column 8, lines 1-5). Since the client accesses this server, the server is a client access point.

In regard to Claim 25, Luu teaches connecting the client machine to another server by means of a bootstrap service (Column 7, lines 11-24 and Column 8, lines 1-5).

In regard to Claim 26, Luu teaches installing optional components on the client machine by executing additional software (Column 2, lines 2-11).

4. Claims 42 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu (U.S. Patent Number 5,860,012) in view of Herrmann (U.S. Patent Number 5,995,756).

In regard to Claim 42, Luu teaches: (1) initiating a connection at a server to the client machine (Column 1, lines 60-66); (2) transmitting an installation service from the server to the client machine based on the connection (Column 2, lines 2-6); and (3) executing the installation service (Column 2, lines 2-6). Luu does not teach determining whether a user that is logged onto the client has sufficient security rights to have software installed on the client machine, and if so, executing a process at the client to install the software. Herrmann, however, teaches checking user rights on a client-to-client basis, and allowing the client to download applications if their rights are approved (Column 10, lines 40-43 and lines 46-52). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to check security rights beforehand, and if the client's rights are approved, allow them to execute an installation process, as taught by Herrmann, and if their rights are not approved, transmit and automatically run an

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installation service as taught by Luu. The benefit of this is, the server can easily install software to clients with little security rights, without fear of a security breach.

In regard to Claim 51, both Luu and Herrmann teach a system for carrying out their method. Since Luu and Herrmann teach the modified method, a modified system can be created to carry out this method.

5. Claims 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu (U.S. Patent Number 5,860,012) in view of May et al. (U.S. Patent Number 5,809,251) and further in view of Lerche (U.S. Patent Number 6,457,175).

For specific rejections of Claims 35 and 37, see the office action mailed on December 19th, 2003.

6. Claims 43-47, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu (U.S. Patent Number 5,860,012) in view of May et al. (U.S. Patent Number 5,809,251) and further in view of Herrmann (U.S. Patent Number 5,995,756).

For specific rejections of Claims 43-47, 49, and 50, see the office action mailed on December 19th, 2003.

7. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Luu (U.S. Patent Number 5,860,012) in view of May et al. (U.S. Patent Number 5,809,251) and further in view of Herrmann (U.S. Patent Number 5,995,756) and Lerche (U.S. Patent Number 6,457,175).

For specific rejections of Claims 48, see the office action mailed on December 19th, 2003.

Response to Arguments

8. Applicant's arguments with respect to Claim 16 starting on Page 18, line 18 have been considered but are moot in view of the new ground(s) of rejection.

9. Applicant's arguments filed November 28th, 2003 have been fully considered but they are not persuasive.

In regard to Claim 1, applicant argues that Luu does not teach or suggest a transmitted installation service that installs software. The applicant claims that the installation package 303 of Figure 3 is a text file that comprises data to be operated upon by an instruction program that is already stored on the user workstation and that the package is merely text data interpreted by the installer program (Page 15, lines 12-23). Although Luu does disclose an installer program already present on the client machine, the installation package still has commands used by this program, and the application is installed by executing the commands in the installation package. This is supported in Column 5, lines 10-15 and Column 7, lines 18-20. The commands contained in the package file are listed in Appendix A, starting in Column 35. Furthermore, there is no language in Claim 1 that supports the idea that there can be no installation program already executing on the client machine. Merely stating that an installation service installs software without the need of a preexisting installation program already residing on the target machine is not sufficient, unless this limitation is claimed, or is a natural result of the steps outlined in the claim.

In regard to Claim 17, the applicant argues that May makes no reference to a data manager evaluating discovery information, and then gives the example of information pertaining to the location or identification of client machines on the network (Page 20, lines 8-11).

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However, the term 'discovery information' is a very general term, and can be interpreted to mean information obtained about the client machine. Version information installed on the client machine qualifies as discovery information, because it is information about software installed on the client machine, and therefore information about the client machine. The claims make no reference that discovery information must include location or identification of client machines on the network. However, if this was the case, then the server would *inherently* need to know this information before installation takes place, because only when a machine is discovered will it have information sent to it, and only when a client address is provided, can the server use this address to sent to a specific client.

In regard to Claim 2, the applicant argues that May does not teach explicitly discovering a client machine, and that no discovery mechanism is disclosed which teaches inherently or expressly obtaining location information (Page 23, lines 2-7). Furthermore, the applicant argues that since May teaches that the client is already connected to request a software image, then the client is already connected, and hence the server does not discover the client. However, if Luu teaches a server that transmits and installs installation packages on multiple client workstations as in Figure 2, items 201 and 206, then the server must inherently discover or already have discovered these client machines if the server is to initiate a connection with these client machines.

In regard to Claims 24-26, the applicant argues that neither Luu nor May disclose any of the elements in these Claims. The examiner disagrees, and directs the applicant to the reasons listed in the rejections of these Claims in the office action mailed on December 19th, 2002.

The applicant argues that there is no motivation to combine Luu and May because the method and system of Luu and May are incompatible with one another, each addressing different ways to update already existing software on a computer (Page 24, lines 10-13). However, since both Luu and May address ways of updating software, as the applicant claims, the motivation lies in the fact that both references contain different features of a software upgrade installer, and the beneficial features can be included in a combination, with motivation for adding each feature.

In regard to Claim 27, the applicant makes similar arguments with respect to Claim 1, and the examiner directs the applicant to the response to Claim 1.

In regard to Claim 35, the applicant argues that in Lerche, the software that is executed is an application, and not an installation service as recited by applicants, and that Lerche does not disclose how an installation service could be loaded and the executed or re-executed (Page 27, lines 17-19 and Page 28, line 1). However, an installation service is an application that installs an application, and so re-execution of an application, in this case an installation service, is obvious in view of Lerche.

In regard to Claim 42, the applicant makes similar arguments with respect to Claim 1, and the examiner directs the applicant to the response to Claim 1.

In regard to Claims 43-51, the applicant argues that neither Luu nor May nor Herrmann disclose any of the elements in these Claims. The examiner disagrees, and directs the applicant to the reasons listed in the rejections of these Claims in the office action mailed on December 19th, 2002.

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Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth A Gross whose telephone number is (703) 305-0542.

The examiner can normally be reached on Mon-Fri 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q Dam can be reached on (703) 305-4552. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

KAG



**TUAN DAM
SUPERVISORY PATENT EXAMINER**